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Attorneys for defendants:  
PURETHINK LLC, a Delaware limited  
liability company, IGOV INC., a Virginia  
corporation, and JOHN MARK SUHY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NEO4J, INC., a Delaware corporation, and  
NEO4J SWEDEN AB, a Swedish  
corporation,  
Plaintiffs,  
v.

PURETHINK LLC, a Delaware limited  
liability company, IGOV INC., a Virginia  
corporation, and JOHN MARK SUHY, an  
individual,  
Defendants.

AND RELATED COUNTERCLAIMS

NEO4J, INC., a Delaware corporation, and  
NEO4J SWEDEN AB, a Swedish  
corporation,  
Plaintiffs,  
v.  
GRAPH FOUNDATION, INC., an Ohio  
corporation, GRAPHGRID, INC., an Ohio  
corporation, and ATOMRAIN INC., a  
Nevada corporation,  
Defendants.

CASE NO. 5:18-CV-7182 EJD  
CASE NO. 5:19-CV-06226-EJD

**DECLARATION OF JOHN D.  
PERNICK IN SUPPORT OF  
DEFENDANTS'  
CONSOLIDATED, COMBINED  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND CROSS-  
MOTION**

Date: March 25, 2021  
Time: 9:00 a.m.  
Dept. Courtroom 4, 5<sup>th</sup> floor  
Judge: Hon. Edward J. Davila

DECLARATION OF JOHN D. PERNICK ISO DEFENDANTS' CONSOLIDATED,  
COMBINED OPPOSITION AND CROSS-MOTION  
CASE NO. 5:18-cv-7182 EJD, 5:19-CV-06226-EJD

John D. Pernick declares as follows:

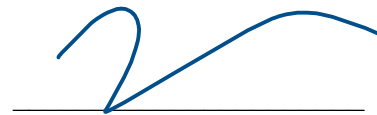
1. I am an attorney at law duly licensed to practice before all courts of the State of California and duly admitted to practice before this Court. I am a member of Bergeson, LLP, counsel of record for Defendant Graph Foundation, Inc., in the action entitled *Neo4j, USA, et. al v. Graph Foundation, Inc., et. al*, Case No. 5:19-cv-06226-EJD (the “GFI Action”). I make this declaration in support of Defendants’ Consolidated Combined Opposition and Cross-Motion filed in the GFI Action and the related action, *Neo4j, USA, et. al. v. Purethink, LLC, et. al*, Case No. 5:18-cv-7182-EJD.

2. I attended the Deposition of Bradley Nussbaum as the 30(b)(6) witness for Graph Foundation, Inc. in the GFI Action on October 16, 2020. Attached as Exhibit A are true and correct copies of excerpts from the transcript of that deposition that are cited in Defendants’ Consolidated Opposition and Cross Motion and supporting papers.

3. Attached as Exhibit B is a true and correct copy of a document bates stamped IGOV0001570185.001-003 that was identified as Exhibit 15 in Mr. Nussbaum’s 30(b)(6) deposition in the GFI Action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 15th day of January, 2021, in Alameda, California



JOHN D. PERNICK

**FILER'S ATTESTATION**

I, Adron G. Beene, am the ECF user whose credentials were utilized in the electronic filing of this document. In accordance with N.D. Cal. Civil Local Rule 5-1(i)(3), I hereby attest that all signatories hereto concur in this filing.

Dated: January 15, 2021

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liability company, IGOV INC., a Virginia  
corporation, and JOHN MARK SUHY

## EXHIBIT A

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NEO4J, INC., a Delaware	)	CASE NO.
corporation, and NEO4J	)	5:19-CV-06226-EJD
SWEDEN AB, a Swedish	)	
corporation,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
GRAPH FOUNDATION, INC., an	)	
Ohio corporation,	)	
GRAPHGRID, INC., an Ohio	)	
corporation, and ATOMRAIN	)	
INC., a Nevada corporation,	)	
	)	
Defendants.	)	

REMOTE VIA ZOOM

30(b)(6) DEPOSITION OF NEO4J INC

BY BRAD NUSSBAUM

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9:17 A.M. PDT  
FRIDAY, OCTOBER 16, 2020

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By: Denise Myers Byrd, CSR 8340, RPR

1 A. So no.

2 Q. Does Graph Foundation share office space with  
3 another entity?

4 MR. PERNICK: Objection; vague.

5 THE WITNESS: Can you be specific about what  
6 you mean by share.

7 BY MR. RATINOFF:

8 Q. Does Graph Foundation have an office, a  
9 physical office?

10 MR. PERNICK: Objection; vague.

11 BY MR. RATINOFF:

12 Q. Does Graph Foundation have a physical office  
13 where it conducts its business?

14 MR. PERNICK: Objection; vague.

15 BY MR. RATINOFF:

16 Q. You can answer the question.

17 A. I'm not sure how to answer the question.

18 Q. Where does Graph Foundation conduct its  
19 business?

20 A. Graph Foundation uses 111 South Buckeye Street  
21 for receiving mail and other important documents.  
22 Otherwise it is a remote-working organization.

23 Q. Is that a P.O. Box, 111 Buckeye Street?

24 A. It is an office location that receives -- that  
25 has a box to receive mail.

1 Q. Are there any other businesses located at  
2 111 -- I'm sorry -- 111 Buckeye Street?

3 A. There are.

4 Q. And what are those other businesses?

5 A. To Graph Foundation's knowledge, AtomRain and  
6 GraphGrid both use 111 Buckeye Street for business  
7 activities.

8 Q. And are you aware of one of those entities  
9 leasing that office space?

10 A. Yes.

11 Q. Which entity leases the office space?

12 A. To our knowledge, AtomRain Inc.

13 Q. And does Graph Foundation conduct business out  
14 of that office space?

15 A. Graph Foundation would receive mail but  
16 otherwise has no presence. To operate, Graph Foundation  
17 needs a place to receive mail. I think that's about it.

18 Q. You mentioned Graph Foundation is a  
19 virtual -- or conducts its business virtually.

20 MR. PERNICK: Objection; misstates testimony.  
21 I believe he said remotely.

22 THE WITNESS: Remotely.

23 MR. RATINOFF: Okay, John, you can object, but  
24 speaking objections --

25 MR. PERNICK: I was just trying to help things

1 along, Jeff.

2 THE WITNESS: Graph Foundation conducts its  
3 business remotely.

4 BY MR. RATINOFF:

5 Q. And you use a computer to conduct business  
6 remotely for Graph Foundation?

7 A. Yes.

8 Q. And what computer do you use to conduct  
9 business for Graph Foundation remotely?

10 A. A MacBook Pro.

11 Q. And who owns the MacBook Pro?

12 A. Me personally.

13 Q. And do you use that computer to conduct  
14 business for AtomRain as well?

15 A. I use my MacBook for a lot of things.

16 Q. Okay, that's not my question.

17 The question is do you use your MacBook Pro to  
18 conduct business for AtomRain?

19 A. Yes.

20 Q. And do you use your MacBook Pro to conduct  
21 business for GraphGrid?

22 A. Yes.

23 Q. And do you have access to your GraphGrid email  
24 account on that laptop?

25 A. Yes.



1 distributions with the same version  
2 number."

3 Do you see that?

4 A. Yes.

5 Q. What did Graph Foundation mean by drop-in  
6 replacement?

7 A. I think we provided an explanation of this.  
8 Drop-in, I think as everybody understands it in  
9 development, you know, essentially functions  
10 equivalently from one version to another. So if you  
11 took a Neo4j Enterprise version, let's say 3.5.4, the  
12 database format that it creates would work with ONgDB  
13 3.5.4, so you can essentially write your data, and with  
14 Neo4j Enterprise, you can use that same data with ONgDB.

15 Q. And just to clarify, that's Graph Foundation's  
16 understanding of drop-in replacement?

17 A. Yeah. Yeah, that's on our site, so.

18 Q. And as of ONgDB Version 3.5.4, it's Graph  
19 Foundation's belief at that time it was a hundred  
20 percent identical to Neo4j Enterprise 3.5.4?

21 A. No, it was not one -- I mean, it couldn't be  
22 100 percent identical because Neo4j was close source as  
23 of 3.5.0-RC1, and so any time after that there have to  
24 be some differences. And so drop-in does not mean  
25 identical; it refers more to compatibility.

1 Q. So as of ONgDB 3.5.4, Graph Foundation had no  
2 way of knowing whether that was identical to Neo4j's  
3 3.5.4, correct?

4 A. Yeah, there's no way to know that they're  
5 100 percent identical, correct.

6 Q. How is Graph Foundation able to represent that  
7 3.5.4 was a drop-in replacement, ONgDB, that is, for  
8 Neo4j 3.5.4?

9 A. I think I described it earlier. Drop-in  
10 replacement refers more to compatibility of features, so  
11 we were able to take a Neo4j 3.5.4 version, create a  
12 database and just show that it worked with ONgDB at that  
13 same version. So I think that's exactly what we  
14 described, and I think that's exactly what we did.  
15 That's the only thing that we can really do absent  
16 having the source code is just show that they are  
17 compatible, they can both read the same database format  
18 which is one of the most essential things to make it  
19 drop-in.

20 Q. Did the Graph Foundation do one for one -- let  
21 me strike that.

22 So with ONgDB -- do you mind if I leave out the  
23 dots -- it's a mouthful -- and just say 3-5-4 is easier?

24 A. That's fine.

25 Q. So ONgDB 3.5.4, does that -- did that contain

1           A. I mean, that it's a fork of the repo so any of  
2           the commits that had been made have all -- you know,  
3           there's many contributors that have made those commits.

4           MR. RATINOFF: Okay. So let me put up another  
5           document.

6           MR. PERNICK: Actually, Jeff, can we just take  
7           a quick break. It's been about an hour, I think.

8           MR. RATINOFF: Okay. What's our time -- we can  
9           go off the record.

10          THE VIDEOGRAPHER: We are now going off the  
11          record. The time is 2:49 p.m. This is the end of  
12          Media 3.

13          (Brief Recess.)

14          (John Picone left the remote deposition.)

15          THE VIDEOGRAPHER: We are now back on the  
16          record. The time is 3:10 p.m.

17          BY MR. RATINOFF:

18           Q. Before we broke, we were talking about ONgDB  
19           Version 3.5.4. What type of testing does -- or did  
20           Graph Foundation do as far as releasing 3.5.4?

21           A. We would have done all of the standard tests  
22           that are run, that are checked into the repository, so I  
23           think there's about 64,000 tests that run for each  
24           build.

25           Q. So when you say -- I'm sorry, I don't mean to

1 keep interrupting you. Please continue.

2 A. And in addition to that, we also do a fair bit  
3 of manual testing to confirm the integrity of each  
4 release and make sure it's working right.

5 Q. So when you say each release or build, you're  
6 just referring to each version or sub version of the  
7 software?

8 A. Yeah, like 3.5.1, 3.5.4, 3.5.19, every release  
9 that's made public.

10 Q. And you said you run I think it was 16,000  
11 tests. Is that -- or was it 64,000?

12 A. Yes. And all of that's available on our  
13 open source build system.

14 Q. So that's testing that's done via GitHub?

15 A. No. It's testing that our build server runs.

16 Q. Where is your build server?

17 A. The tests are part of the source code.

18 Q. So your build server is separate and apart from  
19 GitHub?

20 A. Yes.

21 Q. And so you have a build server that you use to  
22 build a new release and then put it up on GitHub after  
23 you're done running your tests. Am I correct?

24 A. Well, release goes to content distribution  
25 network and then releases are tagged in the repository

1 and the release repository links to the distributions on  
2 the CDN.

3 Q. Does the testing include a function that  
4 includes function testing?

5 A. Yes.

6 Q. It includes performance testing?

7 A. Yes.

8 Q. And what other type of testing is done before  
9 it's released, a particular version?

10 A. Integration testing, stress testing, integrity  
11 of the packaging.

12 Q. That's all done by Graph Foundation?

13 A. Yes.

14 Q. And do you have any idea of what type of  
15 testing Neo4j uses on its coded versions of Neo4j  
16 software?

17 A. Only the stuff that was public is what we would  
18 know about. We wouldn't know anything about their  
19 private testing.

20 Q. For example, Neo4j 3.5.4, you wouldn't have any  
21 idea what testing is done before Neo4j released that  
22 software?

23 A. We know of all the tests that are committed  
24 that are open source so there's quite a few. The  
25 open source code base contains tests.

1 you're welcome to confirm what version that was at.

2 MR. RATINOFF: But that being said, I'm going  
3 to go ahead and drop in this next exhibit. I believe  
4 it's going to be Exhibit 26. You should see Tab 41.

5 (WHEREUPON, Exhibit 26 was marked for  
6 identification.)

7 BY MR. RATINOFF:

8 Q. Do you see that? It should have a Bates number  
9 at the bottom, N4J\_018732. It's a printout dated  
10 6/10/2020 from the Graph Foundation's website.

11 Do you see that?

12 A. Yes.

13 Q. And this is the page for ONgDB 3.6.0-RC1,  
14 correct?

15 A. Yeah. This is the landing page for ONgDB,  
16 yeah.

17 Q. And so there is no Neo4j 3.6, correct?

18 A. To our knowledge, correct. Neo4j's never  
19 released a 3.6 version.

20 Q. So at this point, ONgDB 3.6.0, this is in your  
21 mind a divergent fork of Neo4j?

22 A. Most definitely.

23 Q. And it wouldn't be accurate to describe it as a  
24 drop-in replacement at this point?

25 A. 3.6 is definitely not a drop-in replacement.

1 Q. And you wouldn't describe 4.0 as a drop-in  
2 replacement either?

3 A. I mean, because Neo4j has released a 4.0, it's  
4 possible that it can be, but it's very unlikely. I  
5 don't know that we want to take the effort to prove it  
6 so that we can say it is such.

7 Q. Okay. Do you know offhand which entities are  
8 using ONgDB currently?

9 MR. PERNICK: I'm going to object; vague.  
10 Are you asking him whether he knows every  
11 entity or what entities he knows?

12 MR. RATINOFF: What entity.

13 MR. PERNICK: So --

14 BY MR. RATINOFF:

15 Q. Let me ask the question: Which entities are  
16 you aware of that are currently using ONgDB?

17 A. I think we know that there are -- that the IRS  
18 is using it. I think what we sent in some emails, I  
19 think Tufin is using it. There's handfuls of  
20 individuals. I think, like, our one donor, Liquan I  
21 think is his name, I think he's using it. He donated.  
22 I think I had a small conversation with him about it.  
23 There's various people in the Slack channel that we have  
24 that are using it.

25 Q. Okay. Actually, before we -- I'm going to show

## EXHIBIT B



**From:** Benjamin Nussbaum (ben@atomrain.com)  
**To:** John Mark Suhy (jmsuhy@purethink.com)  
**CC:** Brad Nussbaum (brad@atomrain.com)  
**BCC:**  
**Subject:** Re: [gnu.org #1295811] Neo4j Inc recently added restrictive license conditions to AGPL license.  
**Attachments:**  
**Sent:** 05/22/2018 09:09:53 AM -0700 (PST)

---

Good to have that confirmation. We can keep that as our advantage and decide if/when we make it known to Neo4j Inc that we received that answer.

--

**Benjamin Nussbaum**

President and Chief Technology Officer

Phone: (310) 433-9305

Email: [ben@atomrain.com](mailto:ben@atomrain.com)

 AtomRain | Innovation for a Connected World

On May 22, 2018, at 11:41 AM, John Mark Suhy <[jmsuhy@purethink.com](mailto:jmsuhy@purethink.com)> wrote:

I just got this - I just said this in slack an hour ago too....

----- Forwarded message -----

From: John Mark Suhy <[jmsuhy@purethink.com](mailto:jmsuhy@purethink.com)>

Date: Tue, May 22, 2018 at 11:40 AM

Subject: Re: [[gnu.org](https://www.gnu.org) #1295811] Neo4j Inc recently added restrictive license conditions to AGPL license.

To: <[licensing@fsf.org](mailto:licensing@fsf.org)>

This helps, thank you for your time.

Respectfully,

John Mark Suhy

On Tue, May 22, 2018 at 11:38 AM Donald R Robertson III via RT <[licensing@fsf.org](mailto:licensing@fsf.org)> wrote:

On Sat May 19 03:00:41 2018, [jmsuhy@purethink.com](mailto:jmsuhy@purethink.com) wrote:

> I am not sure whom to bring this up to, but Neo4j Inc, recently added  
> restrictive licensing conditions to their AGPL license. It is my  
> understanding that this is not allowed.

>

> Being such a high profile company, I wanted to bring it to your  
> attention and ask if these additions are allowed by AGPL, and if not -  
> who would be responsible for ensuring they remain compliant?

>

> The addition of "Commons Clause" License condition was added to their  
> AGPL license file. The link is below.

>

> [https://github.com/neo4j/neo4j/blob/3.4/enterprise/server-](https://github.com/neo4j/neo4j/blob/3.4/enterprise/server-enterprise/LICENSE.txt)  
> enterprise/LICENSE.txt

>

> "Commons Clause" License Condition

GFI 30(b)(6)  
Brad Nussbaum

**Ex 15**

10/16/2020 D Myers

> The Software is provided to you by the Licensor under the License, as  
> defined below, subject to the following condition. Without limiting  
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> this Commons Cause License Condition notice.

>

>

>

>

> John Mark Suhy

> PureThink

> [jmsuhy@purethink.com](mailto:jmsuhy@purethink.com)

> 703-862-7780

> <http://purethink.com>

Thank you for your time. Both the GPL and AGPL prevent the addition of further restrictions:

"All other non-permissive additional terms are considered "further restrictions" within the meaning of section 10. If the Program as you received it, or any part of it, contains a notice stating that it is governed by this License along with a term that is a further restriction, you may remove that term."

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Thanks for checking in on this, and I hope this helps.

--

Sincerely,

Donald R. Robertson, III, J.D.  
Licensing & Compliance Manager  
Free Software Foundation  
51 Franklin Street, Fifth Floor  
Boston, MA 02110, USA  
Phone +1-617-542-5942  
Fax +1-617-542-2652 ex. 56

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